

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 24 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

-----  
ASHOK T CHAWLA

Versus

HEIRS OF DECD. KUVARJUI BHUGROMAL

-----  
Appearance:

MR KG VAKHARIA for Petitioners

MR KV SHELAT for Respondent No. 1

-----  
CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/03/2000

ORAL JUDGEMENT

#. The appellants-plaintiffs had filed Civil Suit oNo.115 of 1976 against the respondent-defendant in the court of the learned Civil Judge (JD) Gandhidham . Said suit was filed on the ground that the plaintiffs are the

owners of the wooden pan stall (cupboard type). Said pan stall along with its furniture and fittings was given to the defendant by the father of the plaintiffs nos 1 and 3 and husband of plaintiff no.2 at a monthly remuneration of Rs.60/-. The amount of Rs.60/- p.m. was treated as remuneration for business. After the death of the father of the plaintiffs nos 1 and 3, present plaintiffs used to recover the aforesaid amount of remuneration. But the defendant had failed and neglected to pay the remuneration and therefore, the plaintiffs had filed Suit No.35 of 1970 but in that suit a partial decree was passed regarding payment of money and relief of possession was dismissed. According to the plaintiffs during the pendency of the earlier suit also the defendant had not deposited the mesne profit and had not paid the aforesaid remuneration amount from 1.2.1970 to 30.10.1976. Therefore, the plaintiffs served a notice dated 14.6.1976 on the defendant demanding the amount from the defendant and the defendant having failed to pay the same present suit was filed for possession as well as for arrears of the dues.

#. The defendant appeared in the suit and filed written statement at exh.31. It was stated by the defendant that the suit was not maintainable as the court had no jurisdiction to entertain and try the suit. The defendant also denied the claim of the plaintiffs regarding arrears of remuneration. On these and other grounds the defendant resisted the suit of the plaintiffs.

#. The Trial Court framed various issues at exh.31 and after recording the evidence and hearing the arguments of both the sides the Trial Court came to the conclusion that the provisions of Bombay Rent Act are applicable and the premises in question can be said to be the premises as per the definition given under the Bombay Rent Act and in that view of the matter the Trial Court ultimately dismissed the suit.

#. Aforesaid decree of the Trial Court was challenged by the plaintiff by preferring Regular Civil Appeal No. 443 of 1980 before the learned District Judge, Kutch at Bhuj. Aforesaid appeal was dismissed by the learned Assistant Judge on 6.8.1982.

#. Being aggrieved by the said order of the learned Appellate Judge present appellants-plaintiffs have preferred this Second Appeal before this Court.

#. Present Second Appeal was ordered to be heard with Revision Application No. 220 of 1983. However, aforesaid Revision Application was placed on board for hearing separately and this court has already dismissed the said Revision Application.

#. Since the Second Appeal was ordered to be heard along with the Civil Revision Application 220/83, now this Appeal has been placed for final disposal.

#. At the time of admission of this Second Appeal, the following substantial question of law was raised:

" Whether the stall in question let out to the respondent (original defendant) is premises within the meaning of section 5(8) of the Bombay Rent Hotels and Lodging House Rates Control Act, 1947 ? "

#. It is now not in dispute that the defendant was running his pan shop in the suit premises. It is also not disputed that even on earlier occasion the plaintiff had filed the suit before the Regular Court and the said suit was dismissed by the Trial Court. The premises in question in the present litigation is a wooden cabin and the aforesaid premises was given by the predecessor in title of the plaintiffs to the defendant. Whether Rs.60/- is the remuneration or rent is not the real issue which is required to be determined in this proceedings. But the point which is required to be considered is whether the aforesaid structure can be said to be premises within the definition of section 5(8) of the Bombay Rent Act. The learned Appellate Judge has described the nature of the premises in para 9 of the judgment. Whether the landlord is the owner of the land below the structure or not is not relevant because it is not in dispute that the plaintiff's predecessor in title had given the premises to the defendant. That so called wooden structure was given to the defendant for a consideration of Rs. 60/per month.

The word "Premises" has been defined in section 5(8) of the Bombay Rent Act.

" "Premises" means-

(a) any land not being used for agricultural

purposes,

(b) any building or part of a building let separately (other than a farm building) including-

(i) the garden, grounds, garages and out-houses, if any, appurtenant to such building or part of a building.

(ii) any furniture supplied by the landlord for use in such building or part of a building,

(iii) any fitting affixed to such building or part of a building for the more beneficial enjoyment thereof,

but does not include a room or other accommodation in a hostel or lodging house;"

##. Looking to the aforesaid definition, it can certainly be said that the suit cabin is the premises and therefore, provisions of Bombay Rent Act are applicable to the suit premises. The defendant is therefore, entitled to protection under the Rent Act since the plaintiffs have not instituted the suit before the Rent Court by following the procedure as prescribed by the Act, the suit filed before the ordinary civil court was not competent and maintainable. I therefore, do not find any error of law in the order of the Lower Appellate or that of the Trial Court. This Second Appeal has therefore, no merit. In the circumstances this Second Appeal is dismissed. No order as to costs.

(P.B.Majmudar.J)

govindan